

SUPPLEMENT TO:

**PHASE 1 – REQUEST FOR CONCEPTUAL PROPOSALS AND
QUALIFICATIONS ISSUED JUNE 23, 2004
TO DEVELOP, DESIGN, CONSTRUCT AND FINANCE
CERTAIN IMPROVEMENTS TO THE DELAWARE TURNPIKE
THROUGH A
COMPREHENSIVE DEVELOPMENT AGREEMENT**

**PHASE 1A – REQUEST FOR DETAILED PROJECT FINANCING
PROPOSALS**

**Delaware Department of Transportation
800 Bay Road
P.O. Box 778
Dover, DE 19903**

PHASE 1A – REQUEST FOR DETAILED PROJECT FINANCING PROPOSALS

Section 1. Introduction

The Delaware Department of Transportation ("DelDOT"), an agency of the State of Delaware, hereby requests the submittal of detailed project financing proposals from entities who submitted responsive proposals ("Proposers") to its Request for Proposals: Phase 1 - Request for Conceptual Proposals and Qualifications ("Phase 1 RFP") issued by the Department on June 23, 2004. This request ("Phase 1A RFP") is being issued as a supplement to the Phase I RFP.

Capitalized terms, not otherwise defined herein, shall have the definitions set forth in the Phase 1 RFP.

The Department will not issue its final request for detailed proposals ("Phase 2 RFP") until it has determined that adequate funding is available from public and/or private sources to pay the costs of the Project. (Please note, as stated in the Phase 1 RFP, Chapter VIII, DelDOT reserves the right, among other rights, not to issue the Phase 2 RFP and to cancel or modify this solicitation process at any time prior to the execution of an Agreement, if it deems, in its sole discretion, that such measures are in DelDOT's best interest.)

If the Phase 2 RFP is issued, the Department will base its award of an Agreement in part on the Proposer's financing capability, additional or supplemental financing sources and concepts and its willingness, capability and methodology to invest private capital in the Project, as set forth in its Detailed Project Financing Proposal submitted in response to this Phase 1A RFP. The Phase 2 RFP will require the Proposers to reaffirm the Detailed Project Financing Proposal as it may be modified pursuant to the provisions of the Phase 2 RFP.

One signed original and nine copies of the Detailed Project Financing Proposal, along with one electronic copy in Microsoft Excel format on a CD, should be delivered by 3:00 PM (local time) on September 30, 2005, by hand or overnight courier to:

Delaware Department of Transportation
800 Bay Road
Dover, DE 19901
Attn. John Eustis

Section 2. Detailed Project Financing Proposals – Submission Requirements

For purposes of the Detailed Project Financing Proposal, the Proposers shall assume the cost of final design and construction of the Delaware Turnpike Improvements Project is \$175 million. This amount does not include right-of-way and construction inspection/engineering services to be provided by DelDOT.

The Detailed Project Financing Proposal must constitute a financial plan that includes, at a minimum, proposed sources and uses of funds. Each Proposer shall describe any contractor or third-party financing that it proposes that DelDOT consider. The Proposal shall include a letter from the entity or entities committing to provide such financing, and shall attach a document ("Term Sheet") describing the terms and conditions of such financing. The Proposal shall describe the ownership structure of the financing entity, domicile, regulators, financials/capitalization, and previous similar activities by the entity. The Proposal shall describe the terms and conditions of any equity financing. With respect to any debt financing, the Term Sheet shall include, at a minimum, the amount of financing, expiration of commitment, maturity of debt, draw amounts and frequency, repayment provisions, security, costs of issuance, termination events, remedies, projected interest rate or rates (based on current market rates for similar debt), cost of any third-party credit support, and whether the interest on such debt would be exempt from federal income tax. The Proposal shall also describe any major contingencies involved in successfully arranging such financing, and conditions precedent to closing.

The Proposal shall include a letter from nationally recognized bond counsel firm that the financing would not adversely affect the tax exemption of interest on any debt issued by the Delaware Transportation Authority, and as to the tax-exempt status of any proposed Contractor or third-party debt. If such debt is to be issued on a tax-exempt basis, the opinion should specifically address the application of private activity bond limitations to such debt, and/or whether such debt is to be issued pursuant to an allocation to be granted by the Secretary of Transportation under the provisions of Section 1143 of Title XI of "SAFETEA-LU." (Proposers are not required to obtain a commitment for any such allocation at this time.)

With respect to any leasing proposal, the Proposal shall include the maximum amount of such financing that the Proposer believes will be available, maximum maturity of the lease, draw amounts and frequency, any additional security, costs of issuance, termination events, remedies, projected interest rate or rates (based on current market rates for similar debt), cost of any third party credit support, and whether the interest on such leases would be exempt from federal income tax.

With respect to any credit support proposal, the Proposal shall include a description of the credit support which the Proposer believes would be available, any conditions on

the obligations it would support, the length of the support, any additional security, costs of the credit support, termination events, remedies and projected costs (based on current market rates for similar support). Proposers shall indicate whether they intend to apply for credit support under the federal TIFIA program, but a commitment from the USDOT TIFIA office is not required at this time.

Section 3. Evaluation Process and Criteria

The Detailed Project Financing Proposal will be evaluated in accordance with the following criteria:

- The effectiveness and feasibility of the Detailed Project Financing Proposal;
- The extent to which the Detailed Project Financing Proposal minimizes the financial and project risk for DelDOT and the State of Delaware;
- The extent to which the Detailed Project Financing Proposal demonstrates a commitment to private sector (including Proposer) funding and economic contributions towards Project development; and
- The level of innovation presented in the Detailed Project Financing Proposal with respect to financing and funding the Project.

The Phase 2 RFP will require the Proposers to reaffirm the Detailed Project Financing Proposal, subject to any modifications permitted or required in the Phase 2 RFP.

Section 4. Confidentiality; Delaware Freedom of Information Act

The Detailed Project Financing Proposals submitted in response to the Phase 1A RFP will remain confidential and will not be shared with other Proposers or otherwise disclosed until the earlier of a tentative award of an Agreement to a Proposer or the Department's cancellation of this RFP. Accordingly, DelDOT will not disclose any Detailed Project Financing Proposals to the Governor's Transportation Development and Funding Options Committee, which was recently formed to examine options for increasing the financial resources available to the Transportation Trust Fund for Fiscal Year 2007 and future years.

Notwithstanding the foregoing, in no event shall the State of Delaware, DelDOT, or any of their agents, representatives, consultants, directors, officers or employees be liable to a Proposer or Proposer team member for the disclosure of all or a portion of a Detailed Project Financing Proposal submitted under this Phase 1A RFP.

The Submitter shall identify any information, which it believes is entitled to confidentiality under Delaware Law and Section 2003(c), by placing the word “confidential” on each page as described in Chapter VI of the Phase 1 RFP.

All written correspondence, exhibits, photographs, reports, printed material photographs, tapes, electronic disks, and other graphic and visual aids submitted to DelDOT during this procurement process, including as part of the response to this Phase 1A RFP, are, upon their receipt by DelDOT, the property of the State of Delaware, may not be returned to the submitting parties, and are subject to the Delaware Freedom of Information Act and the exemptions provided by Section 2003(c). In no event shall the State of Delaware, DelDOT, or any of their agents, representatives, consultants, directors, officers, employees, or attorneys be liable to a Submitter or Submitter team member for the disclosure of all or a portion of any submittal in response to this Phase 1A RFP.

If DelDOT receives a request for public disclosure of all or any portion of a response, DelDOT will use reasonable efforts to notify the applicable responding Proposer of the request and give such responding Proposer an opportunity to assert, in writing and at its sole expense, a claimed exception under Section 2003(c) or other applicable law within the time period specified in the notice issued by DelDOT and allowed under 2 Del. C. Section 2003(c).

If a responding Proposer has special concerns about information, which it desires to make available to DelDOT but which it believes constitutes a trade secret, proprietary information, or other information exempt from disclosure, such responding Submitter team should specifically and conspicuously designate that information **by placing “CONFIDENTIAL” in the center header of each such page affected.**

Nothing contained in this provision shall modify or amend requirements and obligations imposed on DelDOT by the Delaware Freedom of Information Act or other applicable law.

Section 5. Miscellaneous

The provisions of Chapter VII [Protest Procedures] and Chapter VIII [DelDOT Reserved Rights] of the Phase 1 RFP shall apply to this Phase 1A RFP as if fully set forth herein.

In connection with the Phase 1A and Phase 2 RFPs, DelDOT reserves the right to suggest changes in the financing options contained in the Detailed Project Financing Proposals, to negotiate with one or more Proposers and to utilize the ideas from any Detailed Project Financing Proposal.